Supreme Court, U.S.
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No. 96-57

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1995

ANDREW C. SCHIFFER,
Petitioner,

vs.

TARRYTOWN BOAT CLUB, INC.,
and its BOARD OF DIRECTORS individually,
JOHN MILLAR, KEVIN McDERMOTT,
ROBERT ROSSI, EDWARD THOMAS,
DONALD BRAINARD, THOMAS KENEALY,
ANTHONY ISMAILOFF, and JOHN PUFF,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO NEW YORK STATE COURT OF APPEALS

SUPPLEMENTAL BRIEF OF PETITIONER

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August 30, 1996

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Statements on oath "a brother attorney" (Br. Opp. ("BO"), p.10) made reversing **Appendix J**[1] constrained

[1] ".. Petitioner's counsel was trained in India; which, from reading **Appendix J** .., seems to be a country with a **corrupt legal system** [but in which our brother apex **Supreme Court of India forthwith HALTED** practice (thus a court's administration) of **arrogance and brazenness** that **usurped** practice of LAW. This **usurpation** is dwarfed by **Judicial Inveiglement**

petitioner's counsel to meet its "**obligation to the Court** [thus to the client]" (*Rule* 15.2). Brief submitted is now on the two news articles, published August 23, 1996, that report the **second judicial landmark** in which **Indian judiciary HALTED practice of corruption** that **usurped** practice of politics: "**Judiciary Re-asserts Independence**" and "**Judicial Activism Coming to the Fore**" (SB App. 1).

This SB will further aid our own **apex judiciary** to experience, first hand, which practice of law is under color of law: loser's by petitioner's counsel (as repeatedly charged) or winner's by defendants' Counsel (as repeatedly defended). Court may then wish to answer first whether:

(a) "Unfortunately for other Petitioners with genuine issues for review .., Petitions like this clog the system and make it difficult for this Court to get its job done" (BO, p. 21); **or**

(b) Fortunately Petitions like this with genuine issues in an **open and shut case expose** and **aid unclog the corruption of our own courts rendering decisions by coerced ignorance of settled law and admitted fact**?

Respondents demand that **Constitutional due process** do not mandate our courts to render decisions **on** Subject Matter: since their Counsels so demand. No arbiter rules litigants winners: **unless** litigants and/or lawyers argue law and fact **and** court renders decision--**ON Subject Matter**. No arbiter rules U. S. Open players winners: unless players play **with tennis balls**--**ON** which all eyes are glued. No court has yet rendered a decision--**ON the Subject Matter**.

(removing the Three Eyes of LAW) (Pet., p.iv) in entire State legal system]." [*Emphasis added*]. (BO, p.10).

POINT I OF BRIEF IN OPPOSITION

Courts Rendered All Decisions on Respondent's Untimely FICTIONAL Article 78 Action Seeking Injunctive Relief--Since Respondents Painted Themselves as Non-Private State Actors--Not One on Petitioner's Timely ACTUAL Plenary Action Seeking Damages

Manifestly: the Subject Matter is **plenary** action **seeking damages--not** article 78 action seeking injunctive relief (ONLY IF and WHEN law settled in *Toscano* and *Matter of Chase* is administered). It is **timely--not** time-barred (ONLY IF and WHEN the six-year contract limitations period **resettled** in *Jorgensen* v. *Silverman*, 638 N.Y.S.2d 482 (2nd Dep't 1996)[2] is administered: based on **damages sought in plenary action** commenced therefor.

FACT AND LAW	DECISIONS AND INNUENDOES
FACT: Appendix L (Pet. App., 58a) is *per se* the **one**	Petitioner's **Appendix L** is one in a continuing series

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[2] An action sounding in legal malpractice may either be governed by the three-year Statute of Limitations normally applicable to malpractice [tort] actions (see, CPLR 214[6]), or by the six-year limitations period applicable to contract actions, **depending on the nature of the substantive relief sought by the plaintiff** (citing cases). .. .. **Since the plaintiff's cause of action seeks damages** .. which would be recoverable under a breach of contract claim, **the six-year contract limitations period applies** (citing a case), and the Supreme Court thus erred in dismissing this claim as time barred. .. .. [*Emphasis added*].

Jorgensen v. *Silverman*, *supra*, at 483-84.

and only foundation of

".. [the plenary] action .. for breach of contract, tortious interference with business relationships and slander against the Tarrytown Boat Club, Inc. and its members in their individual capacities."

Plaintiff sought multiple damages resulting from each of its eight causes of action: resulting from breaches of contract. Pet., pp. 22-24; Complaint is available in the Record).

LAW: Settled law on lawful choice of plenary action plaintiff really commenced (*Toscano* and *Matter of Chase*) in lieu of an article 78 action not commenced is still the settled law in New York--just petrified[3].

of examples [NOT the contract?] .. illustrating that there is no federal question involved here and Petitioner is frivolously causing Respondent's to incur additional legal fees .. (BO, 10; Pet., 21-22)..

Decisions not on the plenary action are self-manifest:

In an action for injunctive relief .. The plaintiff .. commenced this [article 78] action seeking injunctive relief .. [*Emphasis added*]. (Pet., App.D, 4a, affirming Pet., App.E, 8a).

Respondents created an article 78 issue[4]:

.. This is a red herring. The law certainly is settled on this issue and the state court's properly applied it in Respondents' favor." (BO,12). [*Emphasis added*].

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[3] The People, in establishing a Supreme Court to administer the law, did not petrify the law which the court is to administer (citing cases). [*Emphasis added*]. *Berkovitz v. Arbib & Houlberg, Inc.*, 230 N. Y. 261, 274 (Cardozo, J., 1921).

[4] [The Court] cannot create a question of fact by declaring that there is one [when there is none: fiction is fiction, fact is fact, not interchangeable] ..

Per se, a decision (that the fictional article 78 action is time-barred) is not a decision (that the actual plenary action is thus also time-barred). Respondents thus paint the petition (self-exposé of manifest **Judicial Inveiglement**) as "*ad hominem* attacks" on "a brother attorney" (BO, 10).

Per se, doesn't practice of law demanding that Court not involve itself with a "state question"[5] that "[p]etitioner now seeks to reargue" (BO, 12) violate that counsel's "**obligation to the Court**" (*Rule* 15.2)? *Per se*, isn't the demand yet another **entrapment to be blamed** (RB, pp. 2, 6) for succumbing to practice of law under color of law and corruption of judicial power: **defiling due process**?

POINT II OF BRIEF IN OPPOSITION

Quite to the Contrary of Non-Private State Actors Subject Only to Injunctive Article 78 Action, Not Plenary Action (POINT I, *supra*), Respondents Are Now Painted as Pure Private Actors Not Subject to Section 1983 Claim

Is it Constitutional practice of law or continued **corruption of judicial power** when even our apex Court is

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> "Whether there is a question of fact in a case is always a question of law depending possibly upon .. conflicting inferences which may be drawn from uncontradicted evidence [of **fact**, **not** of **fiction**]."
>
> *Otten v. Manhattan R. Co.*, 150 N. Y. 395, 401 (Ct. App. 1896), cited in *Breed v. Ruoff*, 173 N. Y. 340, 342-43 (Ct. App. 1903).

[5] "Whether or not the TBC's constitution was violated is a question for the New York State courts, not for the United States Supreme Court." (BO, p.10).

now asked to: rely on all that does not exist, ignore all that does exist, and **JUST SAY NO** to the petition because--

> **Purely private conduct**, no matter how wrongful, is not within the ambit of section 1983. (citing cases). .. Stated succinctly, private actors cannot be sued under section 1983. ***Sato* v. *Plunkett***, 154 F.R.D. 189, 192 (N.D. Ill. 1994) [see, *infra* **also**]. .. (BO, p. 18). .. The **requisite state action** for a section 1983 claim will not be found if a state merely allows private litigants to use its courts, **unless there is corruption of judicial power by the private litigants [and/or their Counsels?]**. (citing ***McCartney***, p.47). .. **Assuming** that Petitioner's membership in the boat club was a constitutionally protected property interest, nothing in the record even suggests that the deprivation of this interest could be fairly attributable to the State. (BO, p.19).
>
> (BO at pp. 18-19). [*Emphasis added*].

Ironically: the same ***Sato*** Court continued as below:

> Sato's belief that the **sixteenth amendment** to the Constitution does not exist and that the national government therefore lacks the power to collect income taxes .. , led his father Joseph Y. Sato to grief. .. (p. 190) .. Mark Sato appears to be unable or unwilling to accept an adverse judgment of a court .. Mark Sato litigated and lost--and that means he lost. .. (p. 192). .. **What is more, the judicial system is entitled to protect itself against litigants** who abuse its processes. Mark Sato has identified himself as such a person. .. (p. 193).
>
> *Sato* v. *Plunkett*, *supra*, pp. 190, 192, and 193.

Dwarfing litigant Sato without counsel, in case at bar, is it respondents (or petitioner)--both with counsels--who continue to insist: that **Fifth and Fourteenth Amendments**

do not exist and that **due process** do not mandate courts (and thus courts lack the power) to render decisions **on** Subject Matter, *Pennoyer* (Pet., p.21)? Is it respondents (or petitioner)--with Counsels in concert--who continue to cause grief to the others by **inveigling** courts (and now even our **apex Court**) into rendering decisions after decisions that are **not on** Subject Matter itself but, instead, on a **plethora of innuendoes**--nothing more, nothing less?

WHEN CPLR 4511 (Pet., p.11) mandates that every court (thus every lawyer in court) "shall take judicial notice without request of .. law[6]" (Pet. at p. 11), THEN, without an iota of **fear of judiciary** and **with judicial immunity**, isn't non-stop abuse of lawyers' **omnipotent power of law** by **practice of innuendoes**, *per se*, fraud on court[7] and/or **corruption**[8] thereof that **degenerated** our Courts of Law into Courts of Innuendoes: **just to win a case**?

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6 "Law" denotes court rules as well as statutes, constitutional provisions and decisional law.
ABA Code of Jud. Cond., 1990, **Terminology**, p. ABA-57.

7 [W]hile an attorney should represent his client with singular loyalty, that loyalty obviously does not demand that he act dishonestly or fraudulently; on the contrary, his loyalty to the court, as an officer thereof, demands integrity and honest dealing with the court. And when he departs from the standard .. he perpetrates fraud upon a court. .. (ci[ting] cases).
Demjanuk v. *Petrovsky*, 10 F.3d 338, 352 (U.S.Ct.App., 6th Cir., 1993). [*Emphasis added*].

8 A lawyer's duty is to aid any effort under the court's direction to root out corruption and fraud.
In re Becker and Levy, 229 App. Div. 62 (1930), *app. dsmd*; *In re Levy and Becker*, 255 N.Y. 223 (**Cardozo, C.J.**,

Per se, isn't it imperative that our apex Court **HALT** lawyers' practice (and trusting same--courts' administration) of *tortura legum pessima* and *tortura factum pessima*[9]?

Per se, **Courts** are **State actors** that make decisional laws and, in making same, **work with** litigants **and their lawyers** Courts bestow with State license to practice law and aid Courts **based on** Subject Matter for adjudication. Aren't then litigants and lawyers alike **also at least equal State actors** "by joint activity"[10]: **with lawyers as officers of court serving law first** and advocating client second?

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concurring, Ct. App., 1931). *See also, People ex rel. Karlin* v. *Culkin*, 248 N.Y. 465 (**Cardozo, C.J.**, Ct. App., 1928).

9 "The torture or wresting of **laws** is the worst" [shocking the conscience of the court and, as an inevitable logical corollary, the torture or wresting of **facts** shocking the conscience *is* even more so]. *Bl. Dict.*, (6th ed.), p. 1490. [*Emphasis added*].

The term "property" within the constitutional guaranty against its **deprivation without due process** can exist so long as it cannot be characterized as *de minimis* (*Rose* v. *Nashua Bd. of Educ.*, C.A.N.H., 679 F.2d 279). "Property" includes: contract rights (*Joseph Bros. Co.* v. *Brown*, 415 N.E.2d 987), right to office in a union or a social fraternal order (*Talton* v. *Behncke*, D.C.Ill., 106 F.Supp. 157, *rev'd on oth. grounds*, C.A., 199 F.2d 471), and the right to earn a living (*De Mille* v. *American Federation of Radio Artists*, 187 P.2d 769, *cert den.*, 333 U.S. 876). Even where deprivation is temporary and nonfinal, **the requirements of due process must be followed**, *Fuentes* v. *Shevin*, Fla., 407 U.S. 67, 92 S.Ct. 1983, *reh. denied*, 409 U.S. 902. (**BO**, p. 15, f/n 4).

10 Besides joint activity, the wrongful act of a private party [and/or private party's Counsel] may be attributed

CONCLUSION

Repetition (**not** reversal) of the **calculated mistakes** our state courts were **inveigled** into making will continue to **coerce** WE THE PEOPLE into **receiving judicial satire** (Pet., p.i) as OUR JUDICIAL TRUTH and our WAY OF LIFE that WILL NEVER CHANGE[11].

WE THE PEOPLE read published articles and statements our Chief Justice reportedly made[12]. Our Courts

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to the state [Court] if the state [Court] has so involved itself in the defendant's action that the state has compelled the action **[by its defiled decision]** (citing cases including *McCartney* which, at p.47, **also** states:

> Thus, a plaintiff could prevail if he could show that the "private persons [respondents and their lawyers] willfully participated in a joint action with a state official [state courts and now this Court]." *Daniel* v. *Ferguson*, 839 F.2d 1124, 1131 (5th Cir. 1988)).

(BO at p. 19). .. [*Emphasis added*].

11 .. We authorize our lawyers to engage in truth-defeating trickery and distortion. .. Because of the power of precedent, even the U. S. Supreme Court is reluctant to overrule holdings where it has doubts as to whether its decisions serve their intended purposes. .. (p.234). [*Emphasis added*].

Judge Harold J. Rothwax, GUILTY, (RB, f/n 2, pp. 2-3).

12 **Rehnquist Joins Fray on Rulings, Defending Judicial Independence By Linda Greenhouse** Washington -- Chief Justice William H. Rehnquist, .. , said today that the country's history demonstrated how important it was that Federal judges should never be threatened [by politicians] with removal because of their rulings. .. (para). Judicial independence is "one of the crown

must not only *appear to be*, but also *be*, not deprived of their Eyes of the LAW (Pet., p. iv). Even by mistake[13], our apex Court may not wish to reverse basic timeless jurisprudence on rewards for masterminding mistakes[14] and judicial finality[15]: finally at this time.

Dated: August 30, 1996

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jewels of our system of government," the Chief Justice said in a speech .. [*Emphasis added*; SB App. 1, 2aa].
New York Times, Wednesday, April 10, 1996, pp. A1 and B7.

[13] Washington Talk (When Second Thoughts In Case Come Too Late) By Linda Greenhouse -- .. [Retired Justice, Powell Jr., on his second thoughts about a 1986 decision] said, "I think I probably made a mistake" in voting with the majority .. (Para). The vote in that case, *Bowers* v. *Hardwick*, was 5 to 4. .. (Para). .. Intriguing as Justice Powell's second thoughts may be, the fact is that the moment passed.
New York Times, Nov. 4, 1990. [*Emphasis added*].

[14] No one shall be permitted to found any claim upon his own inequity or take advantage of his own wrong (citing a case). [*Emphasis added*].
Imperator Realty Co. v. *Tull*, 228 N.Y. 447, 457 (Cardozo, J., Ct. App., 1920).

[15] We are not final because we are infallible, but we are infallible only because we are final. [*Emphasis added*].
Brown v. *Allen*, 344 U.S. 443, 540 (Justice Jackson, 1953).

SB APP. 1

Relevant Excerpts (Emphasis Added) from the Two Articles Published August 23, 1996 in News India-Times[1]

Judiciary Re-asserts Independence (at p. 55)

.. Visualize the scenario. An all-powerful judge asks the Central Bureau of Investigation ["CBI", *akin* to the FBI here] to organize raids on various politicians. The raid on one former telecommunications minister reveals millions of rupees stashed away in hard cash. This was the very minister that the courts had found clean when corruption charges had been leveled against him.

That time he was gloating over the Supreme Court verdict which said that the phone service privatization program was not unconstitutional.

The former minister was described as the harbinger of a communications revolution in a country where not even one person in 100 has a telephone. Can one become a luminary despite looting the exchequer and showering his cronies with favors?

The CBI is further asked to investigate a case of corruption in the office of the former prime minister. The CBI chief is found instead to be hobnobbing with the man he is supposed to be investigating. Confused? So are we and so is everyone else watching the events unfold in India.

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[1] Founded in 1975, it is an international weekly newspaper published by Perry & Co. (USA) Inc., 244 Fifth Avenue, New York, NY 10001, Vol.26 No. 34 (p. 55 and p. 47).

The winds of change in New Delhi are apparent even to the casual observer. .. The final picture that emerges might win accolades from all around, but the present situation looks as comical as that created by a scriptwriter who cannot find an escape route from a maze of his own creation.

There are interesting sides as well. The star among the top brass of the police force has sexual harassment charges leveled against him. He quashes the charges in the lower courts, but the higher levels of judiciary direct investigation against him. Now he is to go to the very jails in which he dumped hundreds of militant delinquents.

Politicians are running helter-skelter in India to evade the gavel of the Supreme Court. Meanwhile there is the Election Commission hounding them from the other side. There is even the threat of Lok Pal [Ombudsman] being appointed at the apex of this anti-corruption drive. What is more, if all this is not enough, there is even talk of telephones being tapped.

Politics in India is certainly not the most attractive profession going around anymore! .. ..

Yet, there is hope today. Things are moving ahead, with the message down from the top [the judiciary]. .. ..

Judicial Activism Coming To The Fore

By B. K. KARKRA (at p. 47)

As far as the numbers are concerned, ours is the largest democracy. However, the tragedy of our situation is that

the legislature, intended to be the strongest limb of the state, has proved to be the weakest. Its privileges have been reduced mainly to the free use of the lung power and frequent walkouts. Earlier, it was the executive using it as a rubber stamp; .. .. Now it seems to be the turn of the judiciary to hold the center stage. .. .. .. It is, a true sense, supposed to be the voice of the nation. With its weakening the people are losing their voice. .. .. ..

B. R. Ambedkar's clarification in the Constituent Assembly that the import of the phrase "due process" from the US Constitution to frame Article 21 of our own statute will arm our judiciary to go into the merit of our laws and the eventual selection of the words "the procedure established by law" instead, should have left nobody in doubt that the judiciary was vested with powers to go into the constitutionality of the laws [including **administration**].

.. .. Lately, our judiciary, spurred by a spate of public-interest petitions, seems to have decided on a course which has come to be called "judicial activism". .. ..

.. .. Nobody will dispute that the judges, as of today, have a comparatively clean image.

The judges have the most respectable places for themselves inside the courts and in the interest of all, they should stay there. .. Half the people who till yesterday looked to be the men of destiny are today lined up before them as accused. Our learned judges have, thus, some onerous duties ahead of them. These cases have already opened the pages of history for the judges to write themselves in.

Courtesy: The Hindustan Times